

Message Text

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PAGE 01 STATE 086788

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TO AMEMBASSY MOSCOW

S E C R E T STATE 086788

EXDIS

FOL STATE 086788 SENT ACTION BONN INFO BERLIN APRIL 27, 1974

REPEATED TO YOU QUOTE

S E C R E T STATE 086788

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E.O. 11652: GDS

TAGS: PGOV, GE, GW, WC

SUBJECT: SOVIET STATEMENT ON BRUECKMANN CASE

1. SOVIETS APRIL 26 DELIVERED STATEMENT ON BRUECKMANN CASE TO ASSISTANT SECRETARY HARTMAN WHICH THEY SAID SOVIET FOREIGN MINISTER GROMYKO WISHED TO DISCUSS WITH SECRETARY IN GENEVA. EMBASSY IS AUTHORIZED PROVIDE BRITISH, FRENCH AND GERMANS WITH TEXT OF SOVIET STATEMENT BUT SHOULD TAKE NO FURTHER ACTION UNTIL AFTER SECRETARY - GROMYKO MEETING IN GENEVA.

2. BEGIN TEXT SOVIET STATEMENT QUOTE A FEW DAYS AGO THE CONSTITUTIONAL COURT OF THE FEDERAL REPUBLIC OF GERMANY
SECRET

SECRET

PAGE 02 STATE 086788

(FRG) ISSUED A RULING CONCERNING THE SO-CALLED BRUECKMANN

CASE (MS. BRUECKMANN IS A CITIZEN OF THE GERMAN DEMOCRATIC REPUBLIC (GDR); SHE KILLED HER FATHER AND FLED TO WEST BERLIN TO HER MOTHER; AT THE PRESENT TIME SHE IS IN PRISON IN WEST BERLIN; THE GDR AUTHORITIES ARE DEMANDING HER EXTRADITION). THE RULING TOUCHES UPON A NUMBER OF QUESTIONS OF PRINCIPLE CONCERNING THE RELATIONS BETWEEN THE FRG, THE GDR AND WEST BERLIN.

FROM A FORMAL POINT OF VIEW, THE CONSTITUTIONAL COURT HAS NOT SATISFIED MS. BRUECKMANN'S APPEAL AGAINST THE DECISION OF THE SUPERIOR COURT OF WEST BERLIN WHICH, REFERRING TO THE 1953 LAW ON "INTERNAL GERMAN LEGAL AND ADMINISTRATIVE ASSISTANCE IN CRIMINAL CASES," HAD AGREED TO SURRENDER MS. BRUECKMANN TO THE JUDICIAL AUTHORITIES OF THE GDR. THE CONSTITUTIONAL COURT WAS FORCED TO STATE THAT IT HAS NO RIGHT TO REVOKE THE DECISION OF THE WEST BERLIN COURT SINCE, IN VIEW OF THE KNOWN RESERVATIONS OF THE THREE POWERS REGARDING THE FUNDAMENTAL LAW OF THE FRG, THE IMPLEMENTATION OF THE JURISDICTION OF THE CONSTITUTIONAL COURT IN WEST BERLIN IS LIMITED.

ON THE OTHER HAND, THE RULING OF THE CONSTITUTIONAL COURT AMOUNTS, IN ACTUAL FACT, TO A REVISION OF THE DECISION HANDED DOWN BY THE WEST BERLIN COURT. IT IS TRUE THAT THE CONSTITUTIONAL COURT HAS UPHELD THE VALIDITY OF THE WEST BERLIN COURT'S REFERENCE TO THE ABOVE-MENTIONED 1953 LAW JS E LAW STILL IN FORCE, BY REITERATING THE TRADITIONAL WEST GERMAN THESIS ACCORDING TO WHICH THE FRG DOES NOT CONSIDER THE GDR AS A FOREIGN COUNTRY. HOWEVER, THE INTERPRETATION GIVEN IN THE RULING TO THE APPLICATION OF THIS LAW AMOUNTS, IN ESSENCE, TO PROHIBITING MS. BRUECKMANN'S EXTRADITION. NOT BY CHANCE DO ALL WEST GERMAN COMMENTATORS VIRTUALLY UNANIMOUSLY POINT OUT THAT AFTER THIS RULING THE WEST BERLIN COURT WILL HAVE TO REVISE ITS DECISION CONCERNING MS. BRUECKMANN'S SURRENDER TO THE GDR AUTHORITIES.

THE INTERPRETATION GIVEN BY THE CONSTITUTIONAL COURT TO THE POSSIBILITIES OF APPLYING THE 1953 LAW IS OF GREAT POLITICAL SIGNIFICANCE. IN POINT OF FACT, THE
SECRET

SECRET

PAGE 03 STATE 086788

CONSTITUTIONAL COURT COMES OUT AGAINST SURRENDERING TO THE GDR ANY PERSON THAT HAS FLED FROM THERE, REGARDLESS OF THE CRIME COMMITTED BY SUCH PERSON. THE FRG PRESS RECOGNIZES OBLIQUELY THAT THE COURT THUS ENCOURAGES THE VIOLATION OF THE BORDERS OF THE GDR BY IRRESPONSIBLE ELEMENTS BY GUARANTEEING IN ADVANCE THAT THEY WILL NOT BE SURRENDERED TO THE GDR EVEN IF THEY COMMIT CRIMINAL ACTS AGAINST BORDER GUARDS.

OF NO LESS IMPORTANCE ARE THE PROVISIONS OF THE
RULING OF THE CONSTITUTIONAL COURT WHICH REFER TO WEST
BERLIN. IN THIS RULING AGAIN, AS IN THE RULING OF THE
COURT OF JULY 31, 1973 REGARDING THE TREATY ON THE GENERAL
RELATIONS BETWEEN THE FRG AND THE GDR, IN DIRECT
CONTRADICTION OF THE QUADRIPARTITE AGREEMENT, IT IS
JEREMED THAT "BERLIN IS A LAND" OF THE FRG. MOREOVER,--
AND IN THIS REGARD THE COURT WENT EVEN FURTHER THAN THE
RULING OF JULY 13, 1973--THE COURT ASSUMES THE RIGHTS,
DESPITE THE ABOVE-MENTIONED RESERVATIONS OF THE THREE

GOVERNMENTS, TO CARRY OUT SPECIFIC FUNCTIONS WITH
RESPECT TO WEST BERLIN, SPECIFICALLY, TO EXERCISE
UNLIMITED SUPERVISION OVER THE "LAWS OF THE FEDERATION"
IN EFFECT THERE. TO JUSTIFY ITS CLAIMS, THE COURT
REFERS TO THE FACT THAT THE ACT OF TAKING OVER THESE
LAWS BY THE HOUSE OF REPRESENTATIVES OF WEST BERLIN,
DONE AT THE REQUEST OF THE THREE POWERS, HAS ONLY A
FORMAL CHARACTER AND FOR THIS REASON DOES NOT QUESTION
THEIR NATURE AS "FEDERAL LAW."

THE SOVIET SIDE CONSIDERS THAT THE PART OF THE RUL-
ING OF THE CONSTITUTIONAL COURT WHICH REFERS TO WEST
BERLIN IS IN ESSENCE NOTHING BUT A NEW, CRUDE ATTEMPT
TO UNDERMINE THE LEGAL AND POLITICAL BASES OF THE QUADRI-
PARTITE AGREEMENT OF SEPTEMBER 3, 1971. THE RULING OF
THE COURT, SPECIFICALLY IN REFERENCE TO THE "FEDERAL
LAW" AND THE EXERCISE OF SUPERVISION OVER THE "LAWS OF
THE FEDERATION" IN EFFECT IN WEST BERLIN, IS COMPLETELY
GROUNDLESS. IT IS TOTALLY INCOMPETENT, AND ATTEMPTS TO
BE OBSTINATE IN THIS MATTER CAN ONLY LEAD TO COUNTER-
MEASURES AND TO SERIOUS CONSEQUENCES IN WHICH NEITHER
THE SOVIET NOR THE AMERICAN SIDE IS INTERESTED.

SECRET

SECRET

PAGE 04 STATE 086788

MINISTER A.A. GROMYKO WOULD LIKE TO DIRECT THE
ATTENTION OF SECRETARY OF STATE H. KISSINGER TO HOW FAR
CERTAIN FRG CIRCLES ARE PREPARED TO GO IN DISREGA
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